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OFFICE OF PETITIONS

In re Application of
Tracy et al.
Application No. 09/822868
Filed: April 2, 2001
Attorney Docket No. TELO-001/02/US

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: DECISION GRANTING PTA
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This is a decision on the REQUEST FOR CORRECTION OF PATENT TERM ADJUSTMENT timely¹ filed on January 18, 2005 requesting that the United States Patent and Trademark Off. adjust the PTA at the time of the mailing of the notice of allowance from a determination of ZERO (0) days to a determination of two hundred and fifty-three (253) days.

Applicants' request for reconsideration is GRANTED. The Office will adjust the PTA calculation at the time of the mailing of the notice of allowance to reflect a determination of two hundred and fifty-three (253) days.

Applicants assert that the Office erred in the calculating of the PTA. Applicants assert that the Office entered two PALM dates incorrectly which skewed the PTA determination. Specifically, applicants assert that the Office entered the date of the RCE submission as December 17, 2003 rather than the actual date of August 15, 2003² and the date of response to the notice to file missing parts as August 15, 2001 rather than the entry date of September 27, 2001. Accordingly, applicants assert that the two errors cost applicants PTA.

Applicants arguments are persuasive. Specifically, applicants' itemized postcard stamp serves as prima facie evidence of receipt in the Office. Accordingly, applicant submitted the response to the notice to file missing parts on August 15, 2001 and applicants submitted a RCE on August 15, 2003. Applicants submitted the response to file the missing parts within three months and

¹Issue fee paid on January 8, 2005.

²Applicant submitted a postcard stamp receipt as proof of date of submission to the Office.

accordingly the assessment of the forty-three (43) day applicant delay is in error. Moreover, the submission of the RCE on August 15, 2003 should have entitled applicant to a USPTO delay of three hundred and eight (308) days pursuant to 37 CFR 1.702(a)(2).³ Accordingly, applicants are entitled to a PTA determination at the time of the mailing of the notice of allowance of two hundred and fifty three days $((3+81+308) - 139 = 253.)$

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent. Any Office delays in issuance of the patent more than four months past the payment of the issue fee and more than three years after the filing date will be provided for in the issuance notification letter mailed prior to the issuance of the patent.

Telephone inquiries specific to this matter should be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, at (571) 272-7757.



Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

CC: adjusted PAIR calculation

³Delay began on December 16, 2003, the day after the four month deadline and ended on October 18, 2004.